



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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November 7, 2012

Michael L. Stampfli
1305 Winchester Lane, Apt. 7
Springfield, Illinois 62702

Re: Formal Complaint 12-FC-324; Alleged Violation of the Access to Public Records Act by the Gibson County Sheriff's Department

Dear Mr. Stampfli:

This advisory opinion is in response to your formal complaint alleging the Gibson County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Sheriff George Ballard responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on October 23, 2012. You allege that the Department has failed to respond to your request in writing within seven (7) days of receipt. You further allege that the Department has previously informed you that the investigation was complete regarding the matter to which the records were concerning. You are concerned that even if the Department does produce the records that have been requested, the Department will fail to provide all records.

In response to your formal complaint, Sheriff Ballard advised that the Department's investigation into the matter is still ongoing. Further, the Department responded to your request, in writing, on October 29, 2012. In its October 29, 2012 response, the Department acknowledged receipt of your request, provided that your request would be honored upon completion of the investigation, and that any photos that were taken are maintained by the Indiana State Police.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See*

I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are exempted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not *respond* to the request within seven (7) days of receipt, the request is deemed denied (emphasis added). *See* I.C. § 5-14-3-9(b). Again, section 9(b) requires that the agency respond within seven (7) days; not that the requestor receive the response within seven (7) days. The time period provided for under section 9 of the APRA refer to calendar days, not business days. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Department responded in writing to your October 23, 2012 written request on October 29, 2012. As such, it is my opinion that the Department complied with the requirements of section 9 of the APRA in responding to your request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Here, the Department provided in its response to your request that once the investigation was complete, it would honor your request. The Department believes that the investigation will be complete on or about November 19, 2012. As such, it is my opinion that at this time the Department has complied with section 3(b) of the APRA in response to your request. I would only note to the Department that you would not be required to submit a new request once the investigation is complete. Rather, your



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October 23, 2012 request is still considered to be pending until the Department either provide all records that are responsive to the request or issue a proper denial pursuant to I.C. § 5-14-3-9(c).

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Sheriff George Ballard